



(Billing Code 5001-06-P)

DEPARTMENT OF DEFENSE

48 CFR Parts 204, 212, and 252

RIN 0750-AH58

Defense Federal Acquisition Regulation Supplement: Ownership of Offeror (DFARS Case 2011-D044)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to provide a provision for offerors, if owned or controlled by another business entity, to identify the Commercial and Government Entity (CAGE) code and legal name of that business entity.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before **[Insert date 60 days after date of publication in the FEDERAL REGISTER]**, to be considered in the formation of the final rule.

ADDRESSES: Submit comments identified by DFARS Case 2011-D044, using any of the following methods:

o Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting "DFARS Case 2011-D044" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that

corresponds with "DFARS Case 2011-D044." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2011-D044" on your attached document.

- o E-mail: dfars@osd.mil. Include DFARS Case 2011-D044 in the subject line of the message.

- o Fax: 571-372-6094.

- o Mail: Defense Acquisition Regulations System, Attn: Ms. Veronica Fallon, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Veronica Fallon, telephone 571-372-6087.

SUPPLEMENTARY INFORMATION:

I. Background

DoD proposes to collect the CAGE code and name from offerors, if owned or controlled by another business entity, in a new provision with an offeror's representations and certifications. The CAGE code is a five-character identification number used extensively within the Federal Government, and is

administered by the Defense Logistics Information Service. A search feature for CAGE codes is available at http://www.logisticsinformationservice.dla.mil/cage_welcome.asp. CAGE codes for vendors located in the United States may be obtained via registration in the Central Contractor Registration (CCR) application, available at <http://www.acquisition.gov>. Additional information about CAGE code assignments is available at https://www.fsd.gov/app/answers/detail/a_id/186.

The ability to consistently, uniquely, and easily identify owners of offerors for DoD contractors is becoming increasingly required to support the implementation of business tools that provide insight into spending patterns for entire corporations. This new provision will-

- Enable the tracking of performance issues that affect the entire corporation;
- Provide insight for the deployed commander on contractor personnel in-theater;
- Support the Office of the Under Secretary of Defense for Acquisition, Technology and Logistics' preferred supplier program; and
- Facilitate Defense Procurement and Acquisition and Policy priorities for a common price negotiation and audit history tool.

This case requires that a provision be included in the annual representations and certifications completed in the Online Representations and Certifications Application (ORCA). The

Defense Logistics Agency (DLA) will be able to access the ORCA data and use it to supplement the CAGE file maintained by its DLA Logistics Information Service.

DoD published a notice of public meeting in the Federal Register at 76 FR 64902 on October 19, 2011, with public comments due December 9, 2011. No public comments were received.

This rule requires offerors to represent that, if it is owned by another business entity, it has entered the CAGE code and name of that owner. As such, this rule proposes the following DFARS changes:

- Revise 204.1202, Solicitation provision and contract clause, to add the provision at 252.204-70XX, Ownership of Offeror;
- Revise 204.7207, Solicitation provision, to prescribe the use of the provision at 252.204-70XX, Ownership of Offeror;
- Revise 212.301(f)(iv), Solicitation provisions and contract clauses for the acquisition of commercial items, to add the provision at 252.204-70XX, Ownership of Offeror;
- Revise 252.204-7001, Commercial and Government Entity (CAGE) Code Reporting, preface to reflect changes required at 204.1202;
- Revise 252.204-7007, Alternate A, Annual Representations and Certifications, to add the provision at 252.204-70XX, Ownership of Offeror; and
- Add a new provision at 252.204-70XX, Ownership of Offeror.

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD expects that this proposed rule may have an economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Therefore, an Initial Regulatory Flexibility Analysis has been prepared and is summarized as follows:

This rule would affect offerors that are owned by another business entity. As such, this DFARS rule would require an offeror to represent that, if it is owned or controlled by another business entity, it has entered the CAGE code and the name of that entity. DoD made 308,286 new contract awards to contractors with approximately 55,000 unique Data Universal Numbering System (DUNS) numbers in Fiscal Year 2011.

Approximately 41,000 of these awards were to small-business unique DUNS. It is estimated that approximately 5% of these small business unique DUNS are corporations under another business entity. Therefore, DoD estimates that this rule will apply to approximately 2,050 small-business unique DUNS contractors.

The rule does not duplicate, overlap, or conflict with any other Federal rules. There are no significant alternatives to accomplish the stated objectives of this rule. DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2011-D044) in the correspondence.

IV. Paperwork Reduction Act

The rule contains information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35). Accordingly, DoD has submitted a request for approval of a new information collection requirement concerning Ownership of Offeror (DFARS Case 2011-D044) to the Office of Management and Budget.

A. Public reporting burden for this collection of information is estimated to average 0.5 hours per response,

including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden estimated as follows:

Respondents: 308,286

Responses per respondent: 1.5

Total annual responses: 462,429

Preparation hours per response: 0.5 hours

Total response Burden Hours: 231,215 hours

B. Request for Comments Regarding Paperwork Burden.

Written comments and recommendations on the proposed information collection, including suggestions for reducing this burden, should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503, or e-mail Jasmeet_K._Seehra@omb.eop.gov, and a copy to the Defense Acquisition Regulations System, Attn: Ms. Veronica Fallon, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060. Comments can be received from 30 to 60 days after the date of this notice, but comments to OMB will be most useful if received by OMB within 30 days after the date of this notice.

Public comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the DFARS, and will have practical utility;

whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Acquisition Regulations System, Attn: Ms. Veronica Fallon, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060, or e-mail dfars@osd.mil. Include DFARS Case 2011-D044 in the subject line of the message.

List of Subjects in 48 CFR Parts 204, 212, and 252

Government procurement.

Mary Overstreet,

Editor, Defense Acquisition Regulations System.

Therefore 48 CFR parts 204, 212, and 252 are proposed to be amended as follows:

1. The authority citation for 48 CFR parts 204, 212, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 204-ADMINISTRATIVE MATTERS

2. Section 204.1202 is amended by—

a. Redesignating paragraphs (2)(i) through (xiii) as paragraphs (2)(ii) through (xiv); and

b. Adding new paragraph (2)(i) to read as follows:

204.1202 Solicitation provision and contract clause.

* * * * *

(2) * * *

(i) 252.204-70XX, Ownership of Offeror.

* * * * *

3. Section 204.7207 is revised to read as follows:

204.7207 Solicitation provisions.

(a) Use the provision at 252.204-7001, Commercial and Government Entity (CAGE) Code Reporting, in solicitations when—

(1) The solicitation does not include the clause at FAR 52.204-7, Central Contractor Registration; and

(2) The CAGE codes for the potential offerors are not available to the contracting office.

(b) Use the provision at 252.204-70XX, Ownership of Offeror, in all solicitations.

PART 212-ACQUISITION OF COMMERCIAL ITEMS

4. Section 212.301 is amended by—

a. Redesignating paragraphs (f)(iv)(C) through (Q) as paragraphs (f)(iv)(D) through (R); and

b. Adding a new paragraph (f)(iv)(C) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(iv) * * *

(C) Use the provision at 252.204-70XX Ownership of Offeror, as prescribed in 204.7207.

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PART 252-SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.204-7001 [Amended]

5. Section 252.204-7001 is amended by removing from the introductory text the reference "204.7207" and adding in its place "204.7207(a)".

6. Section 252.204-7007 is amended by—

a. Removing from the provision heading "(JUN 2012)" and adding in its place "(DATE)";

b. Redesignating paragraphs (d)(1)(i) through (vii) as paragraphs (d)(1)(ii) through (viii); and

Adding a new paragraph (d)(1)(i) to read as follows:

252.204-7007 Alternate A, Annual Representations and Certifications.

* * * * *

(d)(1) * * *

(i) 252.204-70XX, Ownership of Offeror. Applies to all solicitations.

* * * * *

7. Section 252.204-70XX is added to read as follows:

252.204-70XX Ownership of Offeror.

As prescribed in 204.7207(b), use the following provision:

OWNERSHIP OF OFFEROR (DATE)

(a) Definitions. As used in this provision—

Highest-level owner means the business entity, which owns or controls the one or more business entities that own or control the offeror.

Immediate owner means the business entity, which has the most direct and proximate ownership or control of the offeror.

Owner, as used in this provision, means the business entity, other than the offeror, that owns or controls the offeror, or that owns or controls other business entities that own or control the offeror. The two types of owners, for purposes of this provision, are immediate owners and highest-level owners (these owners may be the same for some entities).

(b) The offeror represents by submission of its offer that it [] is or [] is not owned or controlled by a business entity as defined in paragraph (a) of this provision.

(c) If the offeror has indicated "is" in paragraph (b) of this provision, enter the following information:

Immediate owner CAGE code: _____

Immediate owner legal name: _____

(Do not use a "doing business as" name.)

Immediate owner is the same as highest-level owner: ☐ Yes
or ☐ No.

(d) If the offeror has indicated "no" in paragraph (c) of this provision, indicating that the immediate owner is not the highest-level owner, then enter the following information:

Highest-level owner CAGE code: _____

Highest-level owner legal name: _____

(Do not use a "doing business as" name.)

(e) CAGE codes for entities located in the United States may be obtained by registration in the Central Contractor Registration (CCR) application available at <http://www.acquisition.gov>; or by submitting a DD Form 2051 to the address provided on the form. Instructions regarding the assignment of CAGE codes for entities located outside the United States are available at http://www.dlis.dla.mil/forms/form_AC135.asp.

(End of provision)

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